



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 11, 1997

Ms. Lisa K. Smith
Hinkle, Cox, Eaton, Coffield
& Hensley
P.O. Box 9238
Amarillo, Texas 79105-9238

OR97-0322

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103708.

You represent the Hansford County Hospital District (the "district"), which owns and operates Hansford Manor, a nursing home licensed pursuant to Chapter 242 of the Texas Health and Safety Code. The district received a request for information identifying nursing home residents, status and payment amounts owed by such residents, and the dates of admission and discharge of such residents. You assert such information is excepted from disclosure pursuant to section 552.101 of the Government Code, in conjunction with section 102.003(1) of the Human Resources Code, section 242.012 of the Health and Safety Code, and section 19.407 of Title 40 of the Texas Administrative Code. We have considered your arguments and have reviewed the submitted sample documents.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 102.003(1) of the Human Resources Code provides that "an elderly individual's records are confidential and may not be released without the individual's written permission." Section 242.012 of the Health and Safety Code requires each institution licensed under Chapter 242 to "implement and enforce Chapter 102, Human Resources Code," and section 19.407 of Title 40 of the Texas Administrative Code,

¹We assume that the "representative samples" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

relating to Nursing Facility Requirements for Licensure and Medicaid Certification, provides in pertinent part as follows:

The resident has the right to personal privacy and confidentiality of his personal and clinical records.

...

(2) Except as provided in paragraph (3)(B) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility.

(3) The resident's right to refuse release of personal and clinical records does not apply when:

(A) the resident is transferred to another health care institution;

(B) record release is required by law;

(C) during surveys.

...

(5) All information that contains personal identification or descriptions which would uniquely identify an individual resident or provider of health care is considered to be personal and private and will be kept confidential....

On the basis of these provisions, we conclude the requested information is confidential by law and, in the absence of authorization for release by the subject of the records, must be withheld from disclosure under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 103708

Enclosures: Submitted documents

cc: Charlie Johnson
P.O. Box 854
Gruver, Texas 79040
(w/o enclosures)